

APPEAL NO. 161584
FILED OCTOBER 12, 2016

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on July 2, 2015, and continued on July 14, 2016, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of (date of injury), extends to a right shoulder glenoid labrum tear and impingement syndrome of the right shoulder; (2) the compensable injury of (date of injury), does not extend to a C5-6 disc bulge; (3) the respondent/cross-appellant (claimant) reached maximum medical improvement (MMI) on the statutory date of June 23, 2014; and (4) the claimant's impairment rating (IR) is 18%. We note that the hearing officer mistakenly identified the carrier as (carrier) in the Order section of the decision.

The appellant/cross-respondent (carrier) appealed the hearing officer's determination that the compensable injury extends to a right shoulder glenoid labrum tear and impingement syndrome of the right shoulder, as well as the hearing officer's MMI and IR determinations, contending that the evidence does not support those determinations. The claimant responded, urging affirmance of those determinations. The claimant cross-appealed the hearing officer's determination that the compensable injury does not extend to a C5-6 disc bulge, contending that the evidence does not support that determination. The appeal file does not contain a response from the carrier to the claimant's cross-appeal.

DECISION

Reversed and remanded for reconstruction of the record.

Section 410.203(a)(1) requires the Appeals Panel to consider the record developed at the CCH. The appeal file in this case contains one compact disc (CD) containing a recording of the CCH held on July 2, 2015, which is two minutes and fifty two seconds long. The hearing officer stated on this CD that he was sending a Presiding Officer's Directive to the designated doctor and continuing the CCH for the designated doctor's response. Texas Department of Insurance, Division of Workers' Compensation (Division) records confirm that a CCH was held on July 14, 2016; however, the file does not contain a CD of the CCH held on July 14, 2016.

There is an incomplete record of the CCHs held in this case. The file indicates that there was no court reporter and the file does not contain a transcript of the CCH

held on July 14, 2016. We reverse and remand this case for reconstruction of the CCH record. See Appeals Panel Decision (APD) 060353, decided April 12, 2006.

Pursuant to Section 410.203(c), the Appeals Panel may not remand a case more than once. Given that we are remanding this case for reconstruction of the record, we have reviewed the CD of the July 2, 2015, CCH, the documentary evidence, the hearing officer's decision, the appeal, the response, and the cross-appeal with regard to the issues in dispute.

The hearing officer determined, in part, that the compensable injury does not extend to a C5-6 disc bulge. The hearing officer adopted the MMI/IR certification from (Dr. H), a referral doctor, and determined that the claimant reached MMI on the statutory date of June 23, 2014, with an 18% IR. However, we note that Dr. H's MMI/IR certification adopted by the hearing officer includes diagnoses of a C5-6 disc bulge, which the hearing officer found to be not compensable, and rotator cuff syndrome, a condition that does not appear to have been before the hearing officer to determine, nor does the decision indicate that the parties stipulated to the compensability of that condition.

We note that in evidence is an operative report dated December 17, 2013, stating that the claimant underwent an arthroscopic debridement of the glenoid labrum and open acromioplasty and excision of the right shoulder distal clavicle. The operative report lists a pre-operative diagnosis of chronic impingement syndrome of the right shoulder, and post-operative diagnoses of a tear of the glenoid labrum and chronic impingement syndrome of the right shoulder.

On appeal the carrier pointed out that the hearing officer incorrectly stated in his Discussion that (Dr. L), the designated doctor appointed by the Division to determine extent of injury, MMI, and IR, opined that the compensable injury included a right shoulder glenoid labrum tear. A review of Dr. L's report in evidence reveals that Dr. L did not specifically opine on the compensability of a right shoulder glenoid labrum tear. Rather, Dr. L noted in his Discussion of the extent of the claimant's compensable injury that an MRI dated October 30, 2012, provided an impression of an abnormal appearance of the glenoid labrum with fiber fraying of the superior and posterior glenoid labrum and globular appearance of the anterior glenoid labrum.

REMAND INSTRUCTIONS

On remand the hearing officer is to reconstruct the record and make findings of fact, conclusions of law, and a decision and order on: (1) whether the compensable injury of (date of injury), extends to a C5-6 disc bulge, a right shoulder glenoid labrum

tear and impingement syndrome of the right shoulder; and (2) the claimant's MMI and IR, that is consistent with Section 408.1225(c), Section 408.125(c), and this decision.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3232.**

Carisa Space-Beam
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Margaret L. Turner
Appeals Judge